



# At-Large Consolidated Policy Working Group

## Supplemental Initial Report on the New gTLD Subsequent Procedures PDP (Overarching Issues & Work Tracks 1-4)

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### Policymaking in the ICANN **At-Large** Community



# CPWG: What, How & Timelines



## 1 What are we developing?

### ALAC Comments/Statement to the GNSO New gTLD Subsequent Procedures Supplemental Initial Report (Additional Topics)

Wiki workspace: <https://community.icann.org/x/Jh68BQ>

PC page: <https://www.icann.org/public-comments/new-gtld-subsequent-procedures-supp-initial-2018-10-30-en>

## 2 How and Timelines

[1] Start	[2] Deliberate			[3] Settle for ALAC Vote	[4] Submission
Review Report	Call for inputs to frame positions	Consider proposed positions	Consider draft statement	Settle draft statement	Submit ratified statement
5 Nov 2018	CPWG call 7 Nov	CPWG call 5 Dec	Via CPWG email list & wiki	CPWG call 12 Dec (if time permitting)	12 Dec 2018

# What are the applicable Key Policy Issues?



Following the GNSO New gTLD SubPro WG's earlier Initial Report, this Supplementary Report seeks community feedback on preliminary recommendations, options & questions on 5 additional topics:

2.1

## Auctions: Mechanism of Last Resort

- Continued use of auctions to resolve string contentions
- Consideration for Applicant Support and community applicants
- Alternatives?
- *Link to Auction Proceeds CCWG Report*

2.2

## Private Resolution of Contention Sets (incl. Private Auctions)

- For 2012 round, various means, incl. private auctions was common
- Concern about use of private auctions etc in future rounds, gaming
- Distinguish & allow other private resolution mechanisms? How?
- *Link to SubPro Initial Report s.1.4 & s.2.7.4*
- *Link to Auction Proceeds CCWG Report*

2.3

## Role of Application Comment

- Cutoff for CPE was far later than for non-CPE applications (post IE, EE, Objections)
- Concern that responses to negatively perceived CQs might impact scoring
- Time limit to respond to comments prior to evaluations?

2.4

## Change Requests

- Allowable application changes to resolve contention limited to JVs or closely related string
- Implementation Guidance for consideration & re-evaluation
- *Link to SubPro Initial Report s.1.4*

2.5

## Registrar Support for New gTLDs



- Exceptions to vertical integration
- *Link to SubPro Initial Report s. 2.10.2*

## Backgrounder

Implementation Guideline F: If there is contention for strings, applicants may:

- i) resolve contention between them within a pre-established timeframe
- ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention, and;
- iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

- ❑ Implementation Guideline F spoke to alternatives to auctions of last resort, not reference auctions specifically.
- ❑ Along with 1<sup>st</sup> draft AGB, ICANN published an Explanatory Memo examining different mechanisms of last resort that could be used: <https://archive.icann.org/en/topics/new-gtlds/string-contention-22oct08-en.pdf>
- ❑ That said, greater reliance paid to voluntary resolution of contention prior to forced ICANN auction based on New gTLD Auction Rules – although hindered by several obstacles: link to s.2.4 Change Requests ---

For 2012 round:-

- > 90% of contention sets resolved without forced auction
- 10 ICANN auctions completed with net proceeds of > USD233 mil: link to CCWG on New gTLD Auction Proceeds \*

*\* Cross-check with Auction Proceeds CCWG Report recommendations*

### Preliminary Recommendations, Options & Questions

- ❑ PR 2.1.c.1: ICANN auctions should remain.
  - +Q 2.1.e.1: Are auctions of last resort inherently unfair and should be modified, restricted or modified?
  - +Q 2.1.e.2: Should other aspects (eg non-financial) be introduced to make auctions of last resort more “fair”?
  - +Q 2.1.e.3: What other measures to consider to enhance “fairness”?
  - +Q 2.1.e.4: Should auctions be eliminated, replaced with a comparative evaluation process? Such as RFP process, random draw.
  - +Q 2.1.e.5: Do auctions of last resort allow deep-pocketed applicant to secure all strings within a market? Is this a concern? Should limit be placed on number of auctions per applicant? Is this anti-competitive? Difficult to enforce?
  
- ❑ PR 2.1.c.2: Additional options for voluntary contention resolution, being:
  - Option 2.1.d.1: Different Type of Auctions: Vickrey auction
    - Could eliminate contentions sets at beginning
    - Concern over value place on a string
    - Still favor deep pockets – impact on ASP and community applicants
    - Concern over ICANN securing highly proprietary info
  
  - Option 2.1.d.2: Alternatives to Auction:

2.1.d.2.1 Request for Proposals	2.1.d.2.2 Random Draw	2.1.d.2.3 System of Graduated Fees
<ul style="list-style-type: none"> <li>• Third-party evaluators</li> <li>• Criteria around diversity eg priority to first applicants, community applicants, minority-supported applicants</li> </ul>	<ul style="list-style-type: none"> <li>• Simple, effective, fair, eliminate comparative evaluations?</li> <li>• Lottery, require proper licensing</li> </ul>	<ul style="list-style-type: none"> <li>• Established for each additional application submitted by an applicant</li> <li>• Possibly limits number of applications going to auction</li> <li>• Would this favor larger entities?</li> </ul>

Prelim Recs, Options & Questions	Proposed Position/Response
PR 2.1.c.1 Continued use of auctions to resolve string contentions + Q 2.1.e.1	<b>Do not object but not preferred</b> - Auctions by its very nature will favour applicants with more resources - But unless better mechanism of last resort found, 'ICANN-approved' auctions may have to be retained - More/continued effort on facilitating voluntary resolution to minimize use of auctions - 'ICANN-approved' auctions do generate funds which can be used potentially for end-users' benefit - <i>Link to Auction Proceeds CCWG Report</i>
PR 2.1.c.2 Additional options for voluntary contention set resolution	<b>Support in principle</b> - Allow Change Requests of certain nature - Link to response on 2.4 Change Requests
<u>Alternatives?</u>	
O 2.1.d.1 Different Auction types - Vickrey Auction	<b>Advocate</b> need for due consideration for Applicant Support and community applicants - Auctions by its very nature will favour applicants with more resources - No different with Vickrey auction as still premised on second highest bid - 'Best' applicant may not necessarily be one with most resources
<ul style="list-style-type: none"> <li>O 2.1.d.2.1: RFP</li> </ul>	<b>Support in principle</b> , subject to implementation framework - Allows for diversity criteria and priority to select best applicant, other than using 'highest bid' via auction; beneficial for ASP and community applicants - But concern on evaluator(s) – skills, transparency, conflict of interest issues
<ul style="list-style-type: none"> <li>O 2.1.d.2.2: Random Draw</li> </ul>	<b>Possible to consider but RFP may be better alternative</b> - More equitable, no element of 'highest bid' but also disregard diversity (if applicable) - Concern over licensing issues - <i>Note from Christopher Wilkinson: random draw was proposed by pre-ICANN International Ad hoc Committee (IAHC) and roundly rejected at that time</i>
<ul style="list-style-type: none"> <li>O 2.1.d.2.3: Graduated Fees</li> </ul>	<b>Against</b> - Decreasing graduated fees only benefits applicants with multiple applications; increasing graduated fees (i.e. higher fee for 2 <sup>nd</sup> application <i>asf</i> ) might work but would probably not be well accepted either - Should not have 'discount if buy in bulk' approach, consider impact on warehousing/parking/scalping

See slides 4-5 for backgrounder



Prelim Recs, Options & Questions	Proposed Position/Response
Q 2.1.e.1	<i>See response to PR 2.1.c.1</i>
Q 2.1.e.2 Introduction of other aspects (eg. non-financial) to make auctions more fair	<b>Against</b> <ul style="list-style-type: none"> <li>- 'Best' applicant may not necessarily be one with most resources so auctions inherently unfair</li> <li>- How to apply non-financial criteria in auction? Suggested mechanism of 'multiplier' for bids from Global South is problematic – still relies strictly on \$ sum</li> </ul>
Q 2.1.e.3 Other measures to enhance “fairness”	<b>None</b> <ul style="list-style-type: none"> <li>- Auctions are inherently unfair, no realistic measure to enhance fairness, need to look outside of auctions to level playing field</li> </ul>
Q 2.1.e.4 Replacing auctions with comparative evaluation process eg RFP, or determinative drawing or some other mechanism	<b>Support in principle for comparative evaluation process, subject to implementation framework and for determinative drawing</b> <ul style="list-style-type: none"> <li>- RFP-like process allows for diversity criteria and priority to select best applicant, other than using 'highest bid' via auction; beneficial for ASP and community applicants</li> <li>- But concern on evaluator(s) – skills, transparency, conflict of interest issues</li> <li>- Determinative drawing – <i>see response to O 2.1.d.2.2</i></li> <li>- <i>Other mechanism: None at this time</i></li> </ul>
Q 2.1.e.5 Limit number of auctions an applicant is allowed to enter to make auctions fairer	<b>No reason to support:</b> <ul style="list-style-type: none"> <li>- Auctions not preferred in principle, regardless of limits vs no limits</li> <li>- Concern on limit being a form of anti-competitive barrier</li> <li>- But if to be considered seriously, then perhaps look at limits on established applicants</li> </ul>

See slides 4-5 for backgrounder

### Backgrounder

Implementation Guideline F: If there is contention for strings, applicants may:

- i) resolve contention between them within a pre-established timeframe
- ii) if there is no mutual agreement, a claim to support a community by one party will be a reason to award priority to that application. If there is no such claim, and no mutual agreement a process will be put in place to enable efficient resolution of contention, and;
- iii) the ICANN Board may be used to make a final decision, using advice from staff and expert panels.

- ❑ In 2012 round, > 90% of contention sets resolved were self-resolved.
- ❑ Based on 2012 applicants' input, private resolution through various means – including private auctions – was common, although no public stats available.
- ❑ Private resolution was not a formal part of PDP for 2012 round so no PR or policy guidance; private auction process was not created until after applications were submitted.
- ❑ Unintended consequence: in private auctions, majority of proceeds collected went to losing parties in auction – concern on gaming / purposely losing in certain private auctions to collect portion of proceeds then leverage that for private auctions of other higher priority applications.
  - *Link to IR s.2.7.4.e.2 on gaming or abuse of private auction\** -- Board expressed concern, so did ALAC.
  - Legality of private auctions still in question

\* *Cross-check with SubPro Initial Report s.2.7.4*



### Options & Questions (re-ordered)

- Q 2.2.e.1 Should private resolutions continue? If yes, should funds be distributed amongst remaining applicants within auction? Charity? ICANN? What's most appropriate?
  - Option 2.2.d.1: Should AGB and T&Cs be amended to disallow private resolution where a party is paid to withdraw? Should RA provide for 'forfeiture' of TLD if RO shown to have partaken in such a private resolution?
    - +Q 2.2.e.3 Is this the best prevention method? Other effective mechanisms (eg increasing application fees)?
    - +Q 2.2.e.6: Would increasing application fees deter "gamers" and what amount or criteria to establish amount?
  - Option 2.2.d.2: Does simple "no private auction" rule work? Should all forms of private resolution be banned altogether? -> *modification to Implementation Guidance F*
    - +Q 2.2.e.2 Are issues with private resolutions equally problematic across different TLD types? Should TLD type be a factor in allowing private resolution?
  - Option 2.2.d.3: Allow some private resolutions, disallow others?  
Change request – applicable criteria: Related string, (b) Does not cause another contention set [see also SIR s.2.4]  
ICANN approval subject to: (a) Name collision risk assessment, (b) Public comment, (c) Established Objection procedures  
Consequences: (a) Application not allowed to proceed or (b) Forfeiture of registry
- Q 2.2.e.4: If private resolution overall is potentially problematic, is there practical way to prevent problems?
- Q 2.2.e.5: Else, are there practical ways to allow some but disallow others (as above)? What's acceptable form of private resolution and what's not? Who determines whether party engaged in non-acceptable form(s) and how?

Options	Proposed Position/Response
<p>O 2.2.d.1 Disallowing resolution of string contention via private resolution where party is paid to withdraw – state so in AGB and program T&amp;Cs, with consequences expressed in Registry Agreement</p>	<p><i>On gaming or abuse of private auctions</i></p> <ul style="list-style-type: none"> <li>• <i>Link to IR s.2.7.4.e.2</i> -- Board expressed concern, but we not yet know enough on abuses in 2012 auctions, both ICANN and private ones – need a study on this.</li> <li>• Legality of private auctions still in question</li> <li>• <b>But if evidence found that abuse has occurred, then support proposal to disallow private auctions</b> but we acknowledge implementation challenges</li> </ul>
<p>O 2.2.d.2 Banning all forms of private resolution of contention sets, forcing applicants to auction as mechanism of last resort</p>	<p><b>Against</b></p> <ul style="list-style-type: none"> <li>- See merit in Implementation Guidance F to allow parties some flexibility to mutually agree on how to resolve contention set in order to avoid auction as last resort</li> <li>- In 2012 round, &gt; 90% of contention sets were self-resolved</li> </ul>
<p>O 2.2.d.3 Allow some and disallow others</p>	<p><b>Support in principle</b>, but acknowledge:</p> <ul style="list-style-type: none"> <li>- Challenges in extensively defining what is acceptable vs non-acceptable forms of private resolution</li> <li>- Challenges in monitoring and disallowing some forms if and where abuse has occurred</li> </ul> <p>- Perhaps more effective to focus on getting desirable outcomes through transparent Change Request and remediation processes</p>

See slides 8-9 for backgrounder

Questions	Proposed Position/Response
Q 2.2.e.1 Should private resolutions be continued? How to distribute funds (from private auctions) – amongst remaining applicants, charity, ICANN etc?	<b>Support for private resolution but not private auctions</b> - see merit in Implementation Guidance F to allow parties some flexibility to mutually agree on how to resolve contention set in order to avoid auction as last resort. Note in 2012 round, > 90% of contention sets were self-resolved
Q 2.2.e.2 Should type of TLDs be a factor in determining whether private resolution should be allowed?	Possibly, but depending on circumstances: <ul style="list-style-type: none"> <li>- .Brand TLD contention sets may be more easily resolved privately</li> <li>- geoTLDs resolution needs government/public authority / community intervention</li> </ul>
O 2.2.e.3 Is expressly prohibiting private resolutions in AGB, T&Cs and RA the best way to prevent private resolutions? To prevent profiting from withdrawing applications.	<ul style="list-style-type: none"> <li>- Legally, may be necessary in order to provide for cancellation or forfeiture, but there are likely ways around those expressed prohibitions, especially if non-exhaustively described</li> <li>- Financial disincentive might work better – increasing graduated fees</li> </ul>
Q 2.2.e.4 If private resolutions were overall potentially problematic, then how to prevent? Complete ban? Any other ways?	<b>Need a study</b> to establish if abuse actually occurred in 2012 round and if so, how extensive. Complete ban is too harsh to consider without supporting data.
Q 2.2.e.5 If think can allow some and disallow some, what is acceptable vs – non-acceptable forms of private resolution? Who decides and how?	<b>Support notion in principle</b> , but acknowledge: <ul style="list-style-type: none"> <li>- Challenges in extensively defining what is acceptable vs non-acceptable forms of private resolution</li> <li>- May also need to be considered on case-by-case basis, using a mediator through transparent process ?</li> </ul>
Q 2.2.e.6 Will increasing application fee deter ‘gaming’? If yes, how much increase?	- Possibly, but if at all, only with increasing graduated fees (i.e. higher fee for 2 <sup>nd</sup> application by same applicant and so forth) and not base application fee

See slides 8-9 for backgrounder

## Backgrounder

Implementation Guideline C: ICANN will provide frequent communications with applicants and the public including comment forums.

Implementation Guideline Q: ICANN staff will provide an automatic reply to all those who submit public comments that will explain the objection procedure.

- ❑ 2012 AGB called for 60-day Application Comment period, opening when all applications were published. Comments received considered by relevant evaluation panels. Where clarification sought, applicants were given opportunity to respond.
- ❑ Treatment of application comments:
  - Not considered formal objections, comments related to objections disregarded by IE panellists.
  - Objection-based ones could play limited role during objection proceeding.
  - Those directed at Limited Public Interest and Community objection went to the Independent Objector.
  - Those designated to CPE to be considered by CPE panellist.
  - Open to GAC, but not substitute for formal consensus GAC Advice.
- ❑ Application comment system also supported application change requests, PIC statements and complaints re panellist code of conduct violations.
- ❑ In some circumstances, public comments had deadlines in order to be considered by relevant evaluation panel / process.

## Preliminary Recommendations & Questions

- ❑ PR 2.3.c.1: Support Implementation Guideline C on provision of comment forums, but need system to:
  - Better ensure email and name of commentator verified in some manner
  - Support filtering and/or sorting mechanism & allow attachments
  
- ❑ PR 2.3.c.2: AGB to be more explicit on how public comments are to be used/taken up by evaluators, panels, etc and what extent different comment types will impact scoring. Applicants must have opportunity to respond.
  - Q 2.3.e.1: Cutoff for comments considered by evaluators for CPE was far later than those for standard applications (note IE, EE and objections), is this fair? Should period be shortened? Run parallel to IE comment period?
  - Q 2.3.e.2: 2012 round applicants could respond to CQs that might impact scoring. Does this reduce incentive for applicants to respond, including negative comments? If is problem, how to avoid it?
  - Q 2.3.e.3: If there is an application comment period prior to evaluations, should applicants be given time to respond prior to evaluations? Eg. 60-day public comment period + 7-10 days added for response?

Prelim Recs & Questions	Proposed Position/Response
PR 2.3.c.1 To optimize mechanism and system for Application Comment	<p>No reason to object, so <b>Support</b> for:</p> <ul style="list-style-type: none"> <li>- System used to better ensure email &amp; name used for an account are verified in some manner – useful to be able to identify and verify commenter, while privacy not paramount consideration, do not need to be published publicly</li> <li>- System used to support filtering and/or sorting mechanism to better review high comment volume and allow for attachments</li> </ul>
PR 2.3.c.2 AGB should more explicitly state how public comments are to be used / considered by relevant evaluators etc, on scoring; applicants must have opportunity to respond to comments	<p><b>Support</b>, on the basis/principle of:</p> <ul style="list-style-type: none"> <li>- Provides greater clarity in application process, need/avenues for remediation and possibly voluntary PIC additions in avoiding objections</li> <li>- Subject to timing issues, applicant's ability to respond could help with remediation process</li> </ul>
Q 2.3.e.1 Application comment cutoff for CPE was far later than for non-CPE applications (due to timing of various evaluation stages). Should this be shortened, perhaps to run in parallel with the Initial Evaluation period?	<p><b>Support in principle</b></p> <ul style="list-style-type: none"> <li>- Unfair to applications going for CPE to be subjected to longer comment period than for standard applications which are only subject to comment period during Initial Evaluation</li> </ul>
Q 2.3.e.2 Is there less incentive for applicants to respond to all input received through public forum which impact scoring?	<p><b>No issue to be addressed</b></p> <ul style="list-style-type: none"> <li>- Applicants are free to choose whether to respond to all comments or just one perceived as negative or those which might impact scoring</li> </ul>
Q 2.3.e.3 Should applicants be given a time to respond to public comments prior to their consideration, including limited time after close of comment period?	<p>No reason to object, so <b>Support</b></p> <ul style="list-style-type: none"> <li>- Eg given of 60-day public comment period, comment comes in last minute, so proposal for an additional 7-10 days solely for applicant response (if they wish) seems reasonable</li> </ul>

See slides 12-13 for backgrounder



## Backgrounder

- ❑ In 2012 round, discovered many reasons applicants may wish to change aspects of their applications during application & evaluation periods, especially where they could last several years. Some changes are more material than others, some more substantive than others.
- ❑ Requests were considered against a published set of 7 criteria (after the fact) and if approved, were published for a 30-day comment period. The 7 criteria are:
  1. Explanation: Is a reasonable explanation provided?
  2. Evidence that change is to correct error – what indicia to support this?
  3. Does change affect other third parties materially?
  4. Precedent
  5. Fairness to applicant
  6. Materiality – affecting evaluation score or re-evaluation or string contention or community priority
  7. Timing – interference with evaluation process
- ❑ Depending on nature of requested change, may require re-evaluation if received after completion of IE, eg substantive changes to technical or financial portions of application would more likely require re-evaluation than changes to contact information.
- ❑ While change request was beneficial in some cases – namely curing of deficiencies or concerns (eg. from GAC Early Warning), timing of change requests created operational challenges, redundant reviews, processing delays, and extra operational costs.
- ❑ Change request for community-based applications that could impact CPE not allowed.

### Preliminary Recommendation, Option & Questions

- PR 2.4.c.1: 2012 high-level, criteria-based change request process to continue, but operational improvements needed for ICANN Org to:
  - Seek guidance on changes likely to be approved vs not
  - Set forth types required to be posted for public comment vs not
  - Set forth in AGB the types of changes requiring re-evaluation of application vs not
  - Types of changes disallowed in 2012 should be allowed under certain circumstances
  
- Option 2.4.d.1: Application changes intended to resolve string contention – (1) creation of JVs or (2) limited ability to select different string closely related to original string, whereupon:
  - ICANN Org may determine re-evaluation criteria for JVs (applicant responsible for costs)
  - ICANN Org must perform re-evaluation of new string (DNS Stability, String Contention etc) & application still subject to string-related objections
  - New string still subject to name collision risk assessment, public comment & objection procedures (applicant responsible for costs)
  
- Q 2.4.e.1: With respect to possible changes suggested above:
  - Q 2.4.e.1.1: Do we agree with allowing types of changes? How to provide more precise guidance on what type of changes will or will not be allowed? And require re-evaluation? Would this replace or complement the 7 existing criteria?
  - Q 2.4.e.1.2: What are potential risks or possibilities for gaming? How to mitigate?
  - Q 2.4.e.1.3: Criteria for considering limited ability to change? Eg of change that should not be approved?
  
- Q 2.4.e.2: Role of public comment in granting change request?
- Q 2.4.e.3: Changes needed to above 7 identified criteria?

## 2.4 Change Requests



Prelim Rec, Option & Questions	Proposed Position/Response
<p>PR 2.4.c.1 Operational improvements to criteria-based change request process from 2012</p>	<p><b>Support:</b></p> <ul style="list-style-type: none"><li>- ICANN Org providing guidance on changes that will likely to be approved and changes that will likely not be approved</li><li>- ICANN Org should set forth types of changes which are required to be posted for public comments vs those not</li><li>- ICANN Org should set forth in AGB types of changes requiring re-evaluation of some or all of the application vs those not</li></ul> <p><i>NB. The 4<sup>th</sup> bullet of PR 2.4.c.1 is addressed under O 2.4.d.1 and the series of Q 2.4.e.1 to 2.4.e.3 on next slide</i></p>

See slides 15-16 for backgrounder

Prelim Rec, Option & Questions	Proposed Position/Response
<p>O 2.4.d.1 Allowing several types of change requests under certain circumstances – where changes are intended to resolve string contention eg. 1) to create JVs or 2) have limited ability to select a different string closely related to original string.</p> <p>Implementation Guidance considered are:-</p> <p>1) Allowing ICANN Org to determine in event of JV, whether re-evaluation is needed to ensure JV meets program requirements, and for applicant to bear ICANN’s additional, material costs and for application to be subject to delays</p> <p>2) In allowing selection of new string, (i) ICANN Org must perform a re-evaluation of new applied-for string (ii) applications are subject to string-related objections (iii) new string is subject to name collision risk assessment, put out for public comment and open to established objection procedures.</p>	<p><b>For Q 2.4.e.1.1 Do we agree with allowing these types of changes?</b></p> <p><b>Support.</b></p> <ul style="list-style-type: none"> <li>- The specified types of changes should be allowed but strictly for string contention resolution purpose only.</li> <li>- Implementation guidance not only reasonable in context of the contemplated types of changes being allowed but necessary, specifically: <ul style="list-style-type: none"> <li>• Name collision risk assessment</li> <li>• Available for public comment</li> <li>• Open to all established Objection procedures</li> </ul> </li> <li>- Agreeable for applicant to bear ICANN’s additional, material costs and for application to be subject to <u>reasonable</u> delays. Recourse is per Bylaws.</li> <li>- Existing 7 criteria provides good guidance; we also appreciate each change request needs to be considered case-by-case and on its merits <ol style="list-style-type: none"> <li>1. Explanation: Is a reasonable explanation provided?</li> <li>2. Evidence that change is to correct error – what indicia to support this?</li> <li>3. Does change affect other third parties materially?</li> <li>4. Precedent</li> <li>5. Fairness to applicant</li> <li>6. Materiality – affecting evaluation score or re-evaluation or string contention or community priority</li> <li>7. Timing – interference with evaluation process</li> </ol> </li> <li>- Agreeable for applicant to bear ICANN’s additional, material costs and for application to be subject to <u>reasonable</u> delays. Recourse is per Bylaws.</li> </ul>

See slides 15-16 for backgrounder

Prelim Rec, Option & Questions	Proposed Position/Response
<p>O 2.4.d.1 Allowing several types of change requests under certain circumstances – where changes are intended to resolve string contention eg. 1) to create JVs or 2) have limited ability to select a different string closely related to original string.</p> <p>Implementation Guidance considered are:-</p> <p>1) Allowing ICANN Org to determine in event of JV, whether re-evaluation is needed to ensure JV meets program requirements, and for applicant to bear ICANN’s additional, material costs and for application to be subject to delays</p> <p>2) In allowing selection of new string, (i) ICANN Org must perform a re-evaluation of new applied-for string (ii) applications are subject to string-related objections (iii) new string is subject to name collision risk assessment, put out for public comment and open to established objection procedures.</p>	<p><b>For Q 2.4.e.1.2 If these changes are allowed, what are potential risks or possibilities for gaming and how to mitigate?</b></p> <ul style="list-style-type: none"> <li>- Risk mitigation: As with all applications, interested parts of ICANN Community to monitor, identify concerns in change requests; the specified 3-bullet implementation guidance is important in ensuring reasonable assessment and opportunities to raise concerns and/or file objections</li> <li>- Gaming: Unless applicants colluded beforehand, is difficult to envisage how these type of change requests are gamed</li> </ul> <p><b>For Q 2.4.e.1.3 Criteria for considering limited ability change requests for new string? Examples of change NOT to be approved?</b></p> <ul style="list-style-type: none"> <li>- Existing 7 criteria provides good guidance in addition to name collision risk assessment</li> <li>- Any change request for new string where name collision risk present or if new string is NOT closely related to original string (determination may need expert / community input) must not be approved.</li> </ul> <p><b>For Q 2.4.e.2 Role of public comment in determining if a change request should be granted</b></p> <ul style="list-style-type: none"> <li>- Public comment provides opportunity to raise concerns to change request or to withdraw/acknowledge concerns raised on original string in contention have been mitigated</li> </ul> <p><b>For Q 2.4.e.3 Specific changes to suggest to existing 7 criteria for considering change request?</b></p> <ul style="list-style-type: none"> <li>- Criteria “1: Explanation: Is a reasonable explanation provided?” may be supplemented by letters of support from interested stakeholder (outside of applicant)</li> <li>- Criteria “7: Timing – interference with evaluation process” least important</li> </ul>

See slides 15-16 for backgrounder

### Backgrounder

Recommendation 19: Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.

- Section 2.9 of RA states “All domain name registrations in the TLD must be registered through an ICANN accredited registrar; provided, that RO need not use a registrar if it registers names in its own name in order to withhold such names from delegation or use in accordance with Section 2.6”.
- Specification 9 requires Registries that are Affiliated with Registrars or vice versa, to adhere to a Code of Conduct, which among other things, requires Affiliated Registries and Registrars to maintain structural separation and separate books and records.
- Only so-called .Brand TLDs that executed Specification 13 or TLDs for which all registrations are registered to the RO and/or its Affiliates are exempt from that Code of Conduct.
- In all cases, whether exempt or not, only ICANN Accredited Registrars may be used to register names within the TLD.

*Does At-Large / ALAC wish to comment on this topic given that it predominantly relates to ROs and Rrs and Vertical Integration?  
Recall that ALAC did not offer any comments to the SubPro Initial Report s. 2.10.2 on Registrar Non-Discrimination / Registry/Registrar Standardization*



### Options & Questions

- Option 2.5.d.1 & Q 2.5.e.1: Comment on proposals being:
  - Option 2.5.d.1.1: ICANN Org to select a “last-resort” wholesale registrar that would provide resellers ability to sell TLDs that lacked market interest, or verticals lacking ICANN-Accredited registrars
  - Option 2.5.d.1.2: ICANN Org be “clearinghouse” for payments between Ry and Rr that operate in different currencies
  - Option 2.5.d.1.3: Expand number of names that can be registered without use of ICANN-Accredited Rr for smaller registries
  - Option 2.5.d.1.4: AGB could note benefits to potential applicants in communicating with ICANN-Accredited Rr before submitting application to fully understand potential market and technical integration issues
  - Option 2.5.d.1.5: Registry contract should bundle capacity of becoming an Accredited Registrar
  
- Q 2.5.e.2: Other proposals that could assist TLD Registries that have difficulty attracting ICANN-Accredited Registrars?
- Q 2.5.e.3: Should ICANN get involved in assisting Registries or is this outside scope of ICANN’s mission, by-laws or mandate?
- Q 2.5.e.4: How to identify whether a TLD with low market performance is due to lack of demand or lack of sales channels?
- Q 2.5.e.5: Does ICANN forcing Rr to carry TLDs or designating registrars as “registrars of last resort” pose challenges to compliance oversight? Should Rr be liable for compliance actions for TLDs for forced TLDs? By handpicking a few selected Rr as “last resort” does this create the possibility for compliance to go easy on them because ICANN needs them to play a specific role in the marketplace?

Assuming At-Large / ALAC wishes to comment on this topic predominantly relating to Ros-Rrs and Vertical Integration, one that ALAC did not offer any comments to the SubPro Initial Report s. 2.10.2 on Registrar Non-Discrimination / Registry/Registrar Standardization .....

*Preface provided by Christopher Wilkinson:* In general, problems arising from lack of registrar support for new TLD registries stem from flawed ‘cross ownership’ aspects of Vertical Integration where – (a) new registries not allowed to act as own registrar, even temporarily (b) registrars with own registries not incentivized to serve competing, new registries.

Options	Proposed Position/Response
Option 2.5.d.1.1 ICANN Org selecting a “last-resort” wholesale registrar from amongst only registries allowing Post Payment	<p>(per Q.2.5.e.1)</p> <p><b>Neutral but caution</b></p> <ul style="list-style-type: none"> <li>- Likely need large established player which may further entrench their position in industry? Prefer Option 2.5.d.1.3</li> </ul>
Option 2.5.d.1.2 ICANN providing “clearinghouse” for payments between registries and registrars that operate in different currencies	<p>(per Q.2.5.e.1)</p> <p><b>Against</b></p> <ul style="list-style-type: none"> <li>- Cost of doing business – not something ICANN should be involved in alleviating. Little to no reason why registries and registrars can’t themselves factor in cost and quote prices in different currencies</li> <li>- “Clearinghouse” service generally provided by financial institutions for a fee, involves complexities of insurance and currency hedging which ICANN has neither expertise nor mandate to take on.</li> </ul>
Option 2.5.d.1.3 To assist smaller registries “get off the ground” during their launch period, ICANN to allow increase in number of names that can be registered without use of ICANN-Accredited Registrar	<p>(per Q.2.5.e.1)</p> <p><b>Support</b></p> <ul style="list-style-type: none"> <li>- A mechanism (or exemption) which would assist or allow smaller registries “get off the ground” would in general lend to goal of increased competition and choice in registries for registrants</li> <li>- Recommend monitoring impact of this for onward policy review/development</li> </ul>

See slides 20-21 for backgrounder

Options & Questions	Proposed Position/Response
Option 2.5.d.1.4 AGB could note possibility of benefit to potential applicants in communicating with ICANN-accredited registrars before submitting application for potential market and technical integration insights	<p>(per Q.2.5.e.1)</p> <p><b>Caution</b></p> <ul style="list-style-type: none"> <li>- In principle appears sound but may need mitigation strategies against risk of applicant-registrar collusion</li> </ul>
Option 2.5.d.1.5 Registry contract should bundle capacity of becoming an Accredited Registrar	<p>(per Q.2.5.e.1)</p> <p><b>Caution</b></p> <ul style="list-style-type: none"> <li>- This should be optional, should not mandatory</li> </ul>
Q 2.5.e.2 Other proposals to assist TLD registries having difficulty attracting ICANN Accredited Registrars?	<ul style="list-style-type: none"> <li>- No comment</li> </ul>
Q 2.5.e.3 Should ICANN refrain from assisting registries? Outside its mission, bylaws or mandate?	<ul style="list-style-type: none"> <li>- One of ICANN’s core values in performing its mission in the <i>“introduction and promotion of competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process”</i>, hence action in assisting registries with the specific goal of introducing and promoting competition should be welcomed.</li> </ul>
Q 2.5.e.4 How to identify underlying issues on whether a TLD’s low market performance due to lack of demand or lack of sales channels?	<ul style="list-style-type: none"> <li>- Collection and analysis of relevant industry data needed</li> </ul>
Q 2.5.e.5 Compliance issues around “registrars of last resort”	<p><b>Caution against</b> use of “registrar of last resort”</p> <ul style="list-style-type: none"> <li>- Compliance is one source of complications, doubt cost-benefit analysis would show benefit &gt; cost</li> </ul>

See slides 20-21 for backgrounder

# Action Items



- ◉ Further questions at this point?
- ◉ Wish to provide input?
  - Start an email thread on [cpwg@icann.org](mailto:cpwg@icann.org); or
  - Post input on wiki @ <https://community.icann.org/x/Jh68BQ>
- ◉ Penholder to update slides incorporating summary of deliberations from this call, comments via mail list etc and circulate updated slides before next call

Want to join the CPWG and participate in this At-Large policy-making opportunity?

**Contact our Staff Support Leads:**

[Heidi Ullrich](mailto:Heidi.Ullrich@icann.org) <Heidi.Ullrich@icann.org> or [Evin Erdoğdu](mailto:evin.erdogdu@icann.org) <evin.erdogdu@icann.org>

## Thank you